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Edwards Painting, Inc. and International Union of Painters and Allied Trades, District Council 5, affiliated with International Union of Painters and Allied Trades. Cases 19–CA–116399 and 19–CA–122730

January 7, 2021

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

The General Counsel seeks default judgment in this compliance proceeding on the basis that the Respondent failed to file a legally adequate answer to the compliance specification under the National Labor Relations Board's Rules and Regulations. For the reasons that follow, we grant only partial default judgment.

On November 30, 2016, the Board issued a Decision and Order¹ finding that the Respondent violated the Act in several respects, including discriminatorily discharging and failing to assign work to James Scott Oldham and Wyatt McMinn, discriminatorily discharging and refusing to rehire Craig Prinslow, and discriminatorily refusing to hire Gustavo Garcia, Roben White, and Roman Ramos. The Board ordered, in relevant part, that the Respondent make these employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest. On December 19, 2017, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing the Board's Order in full.²

A controversy having arisen over the amount of backpay due, on April 21, 2020,³ the Regional Director for Region 19 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. The Respondent filed an answer on May 12.

On October 29, the General Counsel advised the Respondent that its answer did not satisfy the standards set forth in Section 102.56(a) and (b) of the Board's Rules and Regulations. The General Counsel further advised that if the Respondent did not file an amended answer by November 10, or if the amended answer is still deficient under the Board's Rules and Regulations, he would file a motion for summary judgment.⁴ The Respondent filed an amended answer on November 10.

On November 12, the General Counsel filed a Motion for Default Judgment that alleged the amended answer

was still deficient and urged the Board to issue a default judgment order as if the Respondent had not filed an answer. On November 17, the Board issued an order transferring the proceeding to the Board and giving notice to show cause why the motion should not be granted. The Respondent filed an opposition to the motion, and the General Counsel filed a reply.⁵

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) Form and contents of answer. The answer to the specification must be in writing, signed and sworn to by the Respondent or by a duly authorized agent with appropriate power of attorney affixed, and contain the address of the Respondent. The answer must specifically admit, deny, or explain each allegation of the specification, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial. Denials must fairly meet the substance of the allegations of the specification at issue. When a Respondent intends to deny only a part of an allegation, the Respondent must specify so much of it as is true and deny only the remainder. As to all matters within the knowledge of the Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial will not suffice. As to such matters, if the Respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer must specifically state the basis for such disagreement, setting forth in detail the Respondent's position and furnishing the appropriate supporting figures.

(c) Failure to answer or to plead specifically and in detail to backpay allegations of specification. If the Respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the Respondent, find the specification to be true and enter such order as may be appropriate. If the Respondent files an answer to the specification but fails to deny any allegation of the

Nevertheless, we need not address this question because it does not affect the outcome of this matter.

⁵ In addition to replying to the substance of the opposition, the General Counsel argued the opposition should be struck because it was not filed properly before the deadline. The Board's Office of the Executive Secretary denied this motion to strike in a December 9 letter.

¹ *Edwards Painting, Inc.*, 364 NLRB No. 152 (2016).

² No. 17-72309.

³ All subsequent dates refer to 2020.

⁴ It is not clear why the Region initially indicated that it would file a motion for summary judgment, even if no answer was filed, and then decided to file a motion for default judgment after one was.

specification in the manner required by paragraph (b) of this section, and the failure to deny is not adequately explained, such allegation will be deemed admitted as true, and may be so found by the Board without the taking of evidence supporting such allegation, and the Respondent will be precluded from introducing any evidence controverting the allegation.

The General Counsel's motion contends that the Respondent's answer did no more than relitigate the merits of the Board's underlying decision and accordingly failed, without adequate explanation, to specifically address the compliance specifications backpay calculations as required by Section 102.56(b). We find merit in the General Counsel's motion only in part.

We first recognize the Respondent was unrepresented by counsel and that the Board grants a degree of lenience to pro se litigants. For this reason, the Board generally will not block considering the merits of a case if a pro se respondent files a timely answer that "can reasonably be construed as denying the substance of the complaint allegations." See *Prompt Medical Transportation, Inc. d/b/a Prompt Ambulance Service*, 366 NLRB No. 50, slip op. at 2 (2018) (quoting *Clearwater Sprinkler System*, 340 NLRB 435, 435 (2003)). Even so, the Board has found that a general denial of an allegation in a compliance specification is not sufficient under Section 102.56(b) for a pro se litigant concerning any matter within that party's knowledge, as figures for calculating gross backpay would typically be. See *SK USA Cleaners, Inc.*, 365 NLRB No. 20, slip op. at 3 (2017). Moreover, a party "may not relitigate matters in the compliance stage that were decided in the underlying unfair labor practice proceeding." *M&M Affordable Plumbing, Inc.*, 365 NLRB No. 49, slip op. at 2 (2017).

The Respondent's answer here did not specifically admit or deny any allegation in the compliance specification; the Respondent largely argued against the Board's conclusions in the underlying unfair labor practice decision. The Respondent's answer, however, did question whether the discriminatees had adequately mitigated their damages, and we find it reasonable to construe this pro se answer as denying the compliance specification's interim earnings figures for each discriminatee. Further, because facts regarding the discriminatees' interim earnings were not within the Respondent's knowledge, the Respondent's general denial was a sufficient answer to warrant a hearing on that issue. See *M&M Affordable Plumbing*, above, slip op. at 3; *M.D. Miller Trucking & Topsoil, Inc.*, 363 NLRB No. 49, slip op. at 3 (2015); *Dews Construction Corp.*, 246 NLRB 945, 947 (1979). We accordingly deny the General Counsel's motion for default judgment on the interim earnings allegations.

The Respondent's answer was otherwise deficient to adequately deny any other allegations in the compliance

specification. Under Section 102.56(c), we deem those other allegations admitted as true and grant default judgment on those issues. Accordingly, we shall order a hearing limited to the issue of interim earnings. The Respondent shall not be permitted to relitigate any issues resolved in the Board's underlying decision, nor introduce evidence to challenge the gross backpay calculations and conclusions contained in the compliance specifications.

ORDER

IT IS ORDERED that the General Counsel's Motion for Default Judgment is granted except with regard to allegations concerning the discriminatees' interim earnings.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 19 for the purpose of arranging a hearing before an administrative law judge on the issue of interim earnings.

Dated, Washington, D.C. January 7, 2021

John F. Ring,	Chairman
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Marvin E. Kaplan,	Member
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William J. Emanuel,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD